S.B. CIVIL WRIT PETITION NO.7174/2007

Jai Singh.

vs.

Smt. Pushpa Devi and others.

Date : 29.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.MS Purohit, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner/defendant is aggrieved against the order dated 24.10.2007 by which the petitioner's appeal against the grant of injunction order by the trial court dated 26.7.1995 was dismissed by the appellate court.

According to the learned counsel for the petitioner, the petitioner approached this Court on earlier occasion by filing S.B. Civil Revision Petition No.71/1998 in a matter of appointment of Commissioner. Said revision was disposed of by this Court by order dated 23.2.2000. This Court observed that once the learned Court below has made it clear that the application of the

petitioner for the appointment of the Commissioner is dismissed. Only at this stage and has further made it clear that if during the course of hearing of the appeal, it is thought appropriate or necessary that the matter may be remanded or even the learned Presiding Officer himself may inspect the site for rendering correct decision of the appeal. After taking note of the above facts, this Court observed that the petitioners should better have faith in the good discretion of the learned appellate court instead of rushing in revision.

Learned counsel for the petitioner submitted that despite the above order of this Court dated 23.2.2000, the court below did not appoint the Commissioner and dismissed the appeal of the petitioner. According to the petitioner, the petitioner's only approach to his house is the disputed way which is being sought to be closed by the respondent/plaintiff in the garb of the injunction granted by the trial court and dismissal of the appeal.

Learned counsel for the petitioner submitted that the petitioner only wants that his way, which he is saying is the only way, may not be obstructed by the plaintiff.

I considered the submissions of learned

counsel for the petitioner and perused the facts of the case as well as the relevant documents which have been placed on record by the petitioner.

It appears that the trial court granted injunction in favour of the plaintiff and the appellate court also upheld the order of the trial court. It is not in dispute that the petitioner has no right, title or interest in the property over which the plaintiff wnats to raise construction. The petitioner's contention is that his way will be obstructed and for this, the court below as well as the first appellate court considered the Commissioner's report and the photographs produced by the petitioner wherein there is a reference of the way, full description of which has been given in the Commissioner's report. The first appellate court, in view of the above, found that the way, as claimed by the petitioner, is not the way and the petitioner has another way, which is on the main road and further his name plate is also fixed on this side of his property.

After going through the facts of the case, I do not find any reason to interfere in the

impugned order in view of the finding of facts recorded by the two courts below.

Consequently, this writ petition having no force, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya